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13 UNITED STATES DISTRICT COURT
14 FOR THE EASTERN DISTRICT OF WASHINGTON

15 ROSE PICKINGS,)
16)
17 Plaintiffs,)
18)
19 vs.) Case No.:
20)
21 SUTTELL, HAMMER, & WHITE,) COMPLAINT
22 P.S.; and MIDLAND FUNDING, LLC.)
23)
24 Defendants.)
25)

26 Plaintiff Rose Pickings, by and through her attorneys, Scott M. Kinkley of
27 the *Northwest Justice Project*, and Kirk D. Miller of *Kirk D. Miller, P.S.*, alleges
28 the following:

29 **I. JURISDICTION & VENUE**

30 1.1 Jurisdiction of this Court arises under 15 U.S.C. § 1692k(d), 28
31 U.S.C. § 1337, and 28 U.S.C. § 1331. Supplemental jurisdiction exists for state

1 law claims, pursuant to 28 U.S.C. § 1367. Declaratory relief is available,
2 pursuant to 28 U.S.C. § 2201 and § 2202.

3
4 1.2 Venue is proper in this District, under 28 U.S.C. § 1391(b), because
5 the Defendants conduct affairs and transact business in this District, a significant
6 portion of the unlawful acts giving rise to this Complaint occurred in this District,
7 and the Plaintiff resides within the territorial jurisdiction of the Court.
8

9
10 **II. FEDERAL QUESTION
SUBJECT MATTER JURISDICTION**

11 2.1 This Court has subject matter jurisdiction by virtue of the federal
12 Fair Debt Collection Practices Act, codified at 15 U.S.C. § 1692 (“FDCPA”).

13 2.2 Plaintiff Rose Pickings is a “consumer,” as defined by the FDCPA,
14 15 U.S.C. § 1692(a)(3).
15

16 2.3 Plaintiff Rose Pickings is a natural person, who resides in Spokane
17 County, Washington.
18

19 2.4 Defendants Suttell, Hammer, & White, P.S., and Midland Funding,
20 LLC, alleged that Plaintiff Rose Pickings was obligated to pay a debt incurred for
21 personal, family or household purposes.

22 2.5 Defendants Suttell, Hammer, & White, P.S., and Midland Funding,
23 LLC, were each attempting to collect a “debt,” as defined by FDCPA, 15 U.S.C.
24 § 1692(a)(5), from Plaintiff Rose Pickings.
25

1 2.6 The alleged debt that Defendants Suttell, Hammer, & White, P.S.,
2 and Midland Funding, LLC, attempted to collect was an alleged obligation of the
3 Plaintiff to pay money arising out of a transaction primarily for personal, family
4 or household purposes.
5

6 2.7 More specifically, the money the Defendants attempted to collect
7 from the Plaintiff arose from an alleged breach of a personal credit card account.
8

9 2.8 Defendant Suttell, Hammer & White, P.S., is a multi-state law firm,
10 operating in Washington State, whose principle purpose is filing tens of
11 thousands of lawsuits each year in an attempt to collect consumer debt.
12

13 2.9 Defendant Suttell, Hammer & White, P.S., is a “debt collector,” as
14 defined by the FDCPA, 15 U.S.C. § 1692(a)(6).
15

16 2.10 Defendant Suttell, Hammer & White, P.S., is in the business of
17 collecting debts.
18

19 2.11 Defendant Suttell, Hammer & White, P.S., uses interstate commerce
20 or the mails for the collection of debts.
21

22 2.12 Defendant Suttell, Hammer & White, P.S., regularly collects or
23 attempts to collect, directly or indirectly, debts owed or due, or asserted to be
24 owed or due another using the telephone and mail.
25

 2.13 Defendant Suttell, Hammer & White, P.S., communicated with the
Plaintiff with the intent to collect a debt.

1 2.14 Defendant Midland Funding, LLC, is a company that purchases bulk
2 volume of delinquent consumer debt and attempts to collect the purchased
3 consumer debt by sending letters, placing collection phone calls, and filing
4 thousands of lawsuits in Washington State each year.
5

6 2.15 Defendant Midland Funding, LLC, is a “debt collector,” as defined
7 by the FDCPA, 15 U.S.C. § 1692(a)(6).
8

9 2.16 Defendant Midland Funding, LLC, uses instruments of interstate
10 commerce to collect debts.
11

12 2.17 Defendant Midland Funding, LLC, uses the mail to collect debts.

13 2.18 Defendant Midland Funding, LLC, regularly collects or attempts to
14 collect, directly or indirectly, debts owed or due, or asserted to be owed or due to
15 another using the telephone and mail.
16

17 2.19 All charges that the Defendants alleged that Plaintiff owed were for
18 personal, family or household purposes.
19

20 **III. PARTIES**

21 3.1 Now, and at all relevant times, Plaintiff was a resident of the state of
22 Washington residing within the territorial jurisdiction area of the United States
23 District Court for the Eastern District of Washington.
24
25

1 3.2 Defendant Suttell, Hammer & White, P.S., is a Washington
2 professional service corporation doing business in the Eastern District of
3 Washington.
4

5 3.3 Defendant Suttell, Hammer & White, P.S., is doing business as a
6 “debt collector,” as defined by the FDCPA, 15 U.S.C. § 1692(a)(6), in the
7 Eastern District of Washington of the United States District Court.
8

9 3.4 Defendant Suttell, Hammer, & White, P.S., is a law firm with
10 attorneys licensed in the state of Washington, engaged in the collection of debts
11 within the state of Washington, including Spokane County.
12

13 3.5 Defendant Midland Funding, LLC, is a limited liability corporation
14 doing business as a “debt collector,” as defined by the FDCPA, 15 U.S.C. §
15 1692(a)(6), in the Eastern District of Washington of the United States District
16 Court.
17

18 3.6 Attorneys from Defendant Suttell, Hammer & White, P.S., regularly
19 appear on behalf of Defendant Midland Funding, LLC, in state court collection
20 lawsuits within the territorial jurisdiction of the Eastern District of Washington of
21 the United States District Court.
22

23 3.7 All acts alleged of Defendant Suttell, Hammer & White, P.S., were
24 done on its own behalf and on behalf of Defendant Midland Funding, LLC.
25

IV. FACTS

4.1 On October 17, 2016, Defendant Midland Funding, LLC, filed a civil lawsuit against Plaintiff Rose Picking in the Spokane County District Court, Case Number: 16167674 (hereinafter referred to as the “Debt Collection Lawsuit”).

4.2 The Debt Collection Lawsuit alleged that “defendant [Plaintiff Rose Pickings] has been the obligor of a certain credit account bearing number [xxxx xxxx] 9290, originally issued by Synchrony Bank which has been assigned to plaintiff [Defendant Midland Funding, LLC].”

4.3 The Debt Collection Lawsuit further alleged that “By use of the said credit account, said defendant became indebted on said account for goods, services, and monies with a charge off balance of \$1,109.67, and a current unpaid balance of \$1,109.67, which is fully due and owing to plaintiff, together with such greater sum as may be proved at the time of trial.”

4.4 And finally, the Debt Collection Lawsuit alleged, “we are debt collectors, this is an attempt to collect a debt and any information obtained will be used for that purpose.”

4.5 The Debt Collection Lawsuit was prepared for Defendant Midland Funding, LLC, by Defendant Suttell, Hammer & White, P.S., and signed by attorney Chris Hoxie, WSBA # 46293.

1 4.6 On October 20, 2016, Plaintiff Rose Pickings was served with the
2 Debt Collection Lawsuit.

3
4 4.7 On November 3, 2016, Scott M. Kinkley, an attorney with the legal
5 services law firm, the Northwest Justice Project, filed a Notice of Appearance
6 with the District Court. A true and correct copy of Mr. Kinkley's Notice is
7 attached as Exhibit "A" and incorporated as though fully set forth herein.
8

9 4.8 On November 3, 2016, Marcy Chicks, a legal assistant for the
10 Northwest Justice Project, placed Mr. Kinkley's Notice of Appearance in the
11 mail with the United States Postal Service addressed to "Chis Hoxie, Suttell,
12 Hammer & White, PS, PO Box C-90006, Bellevue, WA 98009." A true and
13 correct copy of the Declaration of Mailing is attached as Exhibit "B" and
14 incorporated as though fully set forth herein.
15

16
17 4.9 On November 3, 2016, Ms. Chicks filed a Declaration of Mailing of
18 Mr. Kinkley's Notice of Appearance with the Spokane County District Court,
19 *Midland Funding, LLC v. Rose Pickings*, Case No.: 1617674.

20
21 4.10 On November 14, 2016, William Damaskos, legal assistant to
22 Suttell, Hammer & White, P.S., mailed Plaintiff Pickings a letter dated November
23 11, 2016 ("November 14, 2016, letter").
24
25

1 4.11 The November 14, 2016, letter was addressed directly to Ms.
2 Pickings – not to her attorney – and mailed to Ms. Pickings’ home address at 541
3 E. Hawthorne Rd., Apt 24, Spokane, WA 99218.
4

5 4.12 Enclosed with the November 14, 2016, letter was a second letter,
6 also addressed to Plaintiff at her home address and dated November 11, 2016, as
7 well as a pleading titled “STIPULATION FOR PAYMENTS AND
8 CONFESSION OF JUDGMENT” captioned in the lawsuit of *Midland Funding,*
9 *LLC v. Rose Pickings*, Spokane County District Court Case No.: 16167674.
10

11 4.13 A true and correct copy of the November 14, 2016, letter and
12 enclosures is attached as Exhibit “C” and incorporated as though fully set forth
13 herein.
14

15 4.14 A true and correct copy of the envelope containing the November
16 14, 2016, letter is attached as Exhibit “D” and incorporated as though fully set
17 forth herein.
18

19 4.15 A copy of the November 14, 2016, letter and stipulation for
20 judgment was not sent to Ms. Pickings’ attorney.
21

22 4.16 Defendants did not notify Plaintiff’s counsel that they requested Ms.
23 Pickings sign a stipulated judgment.
24

25 4.17 The November 14, 2016, letter and enclosures, each and as a whole,
was an attempt to collect a debt from Ms. Pickings.

1 4.18 It is an unfair and deceptive act to attempt to collect a debt from a
2 person known to be represented by an attorney.

3
4 4.19 The November 14, 2016, letter to Ms. Pickings stated, “This letter is
5 written to inform you that our offices did not receive the **Stipulation for**
6 **Payments and Confession of Judgment**. Please immediately return the
7 aforementioned document, **signed and notarized**, in order to avoid further
8 collection efforts.” (Emphasis in the original.)
9

10 4.20 The Plaintiff understood that the statement “in order to avoid further
11 collection efforts” meant that collection efforts would cease if the confession of
12 judgment were entered.
13

14 4.21 Under the least sophisticated consumer standard, the statement “in
15 order to avoid further collection efforts” also implies that collection efforts would
16 cease if the confession of judgment was signed.
17

18 4.22 However, the Suttell, Hammer & White, P.S., law firm, Midland
19 Credit Management, Inc., and Midland Funding, LLC, do not cease collection
20 efforts after entry of judgment, agreed or otherwise.
21

22 4.23 Stated similarly, Plaintiff Pickings would not have avoided further
23 collection efforts if she signed the Stipulated Judgment.
24
25

1 4.24 To the contrary, the Defendants regularly engage in aggressive post-
2 judgment collection activity including garnishment, liens on real property, and
3 supplemental proceedings.
4

5 4.25 The content of the November 14, 2016, letter was false, misleading
6 and deceptive because it implied that collection efforts would be avoided if the
7 stipulated judgment were signed.
8

9 4.26 The content of the November 14, 2016, letter unfairly implied that
10 collection efforts would be avoided if the stipulated judgment were signed.
11

12 4.27 The November 14, 2016, letter to Plaintiff Pickings further stated,
13 “the Stipulation must be signed and notarized pursuant to law.”

14 4.28 The Plaintiff understood that the statement “must be signed and
15 notarized pursuant to law” meant that the “law” required her to agree to the entry
16 of the stipulated judgment.
17

18 4.29 Under the least sophisticated consumer standard, the statement
19 “must be signed and notarized pursuant to law” also implies that the “law”
20 requires agreement to the entry of the stipulated judgment.
21

22 4.30 The content of the November 14, 2016, letter was false, misleading
23 and deceptive where it suggested that the “law” required the Plaintiff to agree to
24 the stipulated judgment.
25

1 4.31 The content of the November 14, 2016, letter unfairly stated that the
2 “law” required the Plaintiff to agree to the stipulated judgment.
3

4 4.32 After receiving the November 14, 2016, letter and enclosures, an
5 emotional Plaintiff Pickings called the Suttell, Hammer, & White, P.S., law firm
6 to plead for mercy.
7

8 4.33 Plaintiff Pickings spoke with a collector believed to be named
9 “Stephanie.”

10 4.34 At some point during the call, Plaintiff Pickings mentioned she had
11 an attorney and was challenged to provide his or her name and phone number.
12 When Ms. Pickings hesitated, while she searched for her attorney’s information,
13 “Stephanie” asked Ms. Pickings if she was “going through the phone book.”
14

15 4.35 Eventually, Plaintiff Pickings was able to provide the name and
16 contact information for her attorney with the Northwest Justice Project. After
17 receiving this information, “Stephanie” placed Ms. Pickings on hold and called
18 attorney Scott M. Kinkley with the Northwest Justice Project and demanded that
19 Mr. Kinkley “verify that he does not represent a Rose Pickings.”
20
21

22 4.36 During her call to Mr. Kinkley, “Stephanie” acknowledged that there
23 was an electronic record indicating that Mr. Kinkley’s Notice of Appearance had
24 been received by Suttell, Hammer, & White, P.S., prior to the November 14,
25 2016, letter.

1 4.37 On information and belief, Suttell, Hammer & White, P.S., records
2 all collection calls with alleged debtors and their attorneys.

3 4.38 Following the phone call with Ms. Pickings, Ms. Pickings made
4 multiple demands through her counsel that a copy of the recordings be produced.

5 4.39 Acknowledging that a copy of the recording existed, the Suttell,
6 Hammer & White law firm refused to produce a copy.
7

8 4.40 On November 21, 2016, attorney Scott M. Kinkley sent an anti-
9 spoliation letter to Defendant Chris Hoxie at Suttell, Hammer & White, P.S., PO
10 Box C-90006, Bellevue, WA 98009, informing Mr. Hoxie of forthcoming
11 litigation and his duty to preserve a copy of the voice recording with Plaintiff
12 Pickings.
13

14 4.41 A true and correct copy of the November 21, 2016, anti-spoliation
15 letter is attached as Exhibit "E" and incorporated as though fully set forth herein.
16

17 4.42 The November 14, 2016, letter and phone call with the Suttell,
18 Hammer & White, P.S., collector caused significant mental anguish and
19 emotional distress.
20

21 **V. VIOLATION OF THE FDCPA 15 USC § 1692**

22 5.1 Defendants Suttell, Hammer & White, P.S., and Midland Funding,
23 LLC, each violated 15 U.S.C. § 1692b(6) by communicating with Plaintiff
24
25

1 Pickings in an attempt to collect a debt after it knew she was represented by an
2 attorney.

3
4 5.2 Defendants Suttell, Hammer & White, P.S., and Midland Funding,
5 LLC, each violated 15 U.S.C. § 1692e and e(10) by making false, deceptive and
6 misleading statements which falsely, deceptively and unfairly represented that (1)
7 Ms. Pickings was required by law to sign a stipulated judgment; (2) that by
8 signing a stipulated judgment she would avoid further collection efforts; and (3)
9 by attempting to collect a debt from Ms. Pickings while she was represented by
10 an attorney.
11

12
13 5.3 Defendants Suttell, Hammer & White, P.S., and Midland Funding,
14 LLC, each violated 15 U.S.C. § 1692f by using unfair or unconscionable means
15 to collect or attempt to collect a debt by (1) stating Ms. Pickens was required by
16 law to sign a stipulated judgment; (2) that by signing a stipulated judgment she
17 would avoid further collection efforts; and (3) by attempting to collect a debt
18 from Ms. Pickings while she was represented by an attorney.
19

20 21 **VI. VIOLATION OF THE WASHINGTON** 22 **COLLECTION AGENCY ACT**

23 6.1 Defendant Suttell, Hammer & White, P.S., is a “collection agency”
24 as defined by RCW 19.16.100.
25

1 6.2 Defendant Suttell, Hammer & White, P.S., is directly or indirectly
2 engaged in soliciting claims for collection, or collecting or attempting to collect
3 claims owed or due or asserted to be owed or due another person.
4

5 6.3 The sole business of Suttell, Hammer & White, P.S., is the
6 collection of debts.
7

8 6.4 Defendant Suttell, Hammer & White, P.S., attempts to collect the
9 debts allegedly owed or due to another.

10 6.5 Defendant Suttell, Hammer & White, P.S., is licensed as a collection
11 agency in the State of Washington.
12

13 6.6 Defendant Midland Funding, LLC, is a “collection agency” as
14 defined by RCW 19.16.100.

15 6.7 Defendant Midland Funding, LLC, is directly or indirectly engaged
16 in soliciting claims for collection, or collecting or attempting to collect claims,
17 owed or due or asserted to be owed or due another person.
18

19 6.8 Defendant Midland Funding, LLC, is engaged in the business of
20 purchasing delinquent or charged off claims for collection purposes.
21

22 6.9 The sole business of Midland Funding, LLC, is the collection of
23 debts.
24

25 6.10 Defendant Midland Funding, LLC, attempts to collect the debts
allegedly owed or due to another.

1 6.11 Defendant Midland Funding, LLC, is licensed as a collection agency
2 in the state of Washington.

3 6.12 Defendants Suttell, Hammer & White, P.S., and Midland Funding,
4 LLC, each violated the WCAA by engaging in practices prohibited by RCW
5 19.16.250(12) by attempting to collect a debt from a person known to be
6 represented by an attorney.
7

8
9 **VII. VIOLATION OF THE WASHINGTON**
10 **CONSUMER PROTECTION ACT**

11 7.1 A violation of the WCAA is a per se unfair or deceptive act or
12 practice, occurring in trade or commerce, against the public interest and capable
13 of repetition.

14 7.2 The Consumer Protection Act of the state of Washington requires
15 that all businesses abstain from unfair or deceptive practices or acts.
16

17 7.3 Defendants Suttell, Hammer & White, P.S., and Midland Funding,
18 LLC, by and through its agents and employees, its policies and procedures,
19 engaged in deceptive and unfair acts and practices that caused injury to the
20 Plaintiff.
21

22 7.4 Defendants Suttell, Hammer & White, P.S., and Midland Funding,
23 LLC, engaged in unfair and/or deceptive acts and practices in attempting to
24 collect a debt from a person known to be represented.
25

1 7.5 Defendants Suttell, Hammer & White, P.S., and Midland Funding,
2 LLC, have engaged in unfair and/or deceptive acts and practices by representing
3 that by signing a stipulated judgment Ms. Pickings would avoid further collection
4 efforts.
5

6 7.6 Defendants Suttell, Hammer & White, P.S., and Midland Funding,
7 LLC, have engaged in unfair and/or deceptive acts and practices by representing
8 that Ms. Pickings was required by “law” to agree to a stipulated judgment.
9

10 7.7 The conduct of Defendants Suttell, Hammer & White, P.S., and
11 Midland Funding, LLC, occurred in trade and/or commerce.
12

13 7.8 Defendants Suttell, Hammer & White, P.S., and Midland Funding,
14 LLC, attempt to collect hundreds or thousands of alleged debts in the state of
15 Washington each year.
16

17 7.9 The acts and practices of Defendants Suttell, Hammer & White,
18 P.S., and Midland Funding, LLC, are capable of repetition and, therefore, affect
19 the public interest.
20

21 7.10 Defendants Suttell, Hammer & White, P.S., and Midland Funding,
22 LLC, by and through its agents and employees, its policies and procedures, have
23 engaged in deceptive and unfair acts and practices that have caused injury to the
24 Plaintiff by causing the Plaintiff to incur phone charges, travel expenses, postage
25 and other expenses.

1 7.11 Defendants Suttell, Hammer & White, P.S., and Midland Funding,
2 LLC, engaged in unfair and deceptive acts and practices in attempting to collect
3 an alleged debt from the Plaintiff.
4

5 7.12 Collection of unlawfully inflated, alleged debts is against public
6 interest.
7

8 7.13 Unlawful and unfair debt collections are against public interest.

9 7.14 The Defendants' actions were the direct cause of the injury to
10 Plaintiff's property. As a result of the Defendants' actions, Plaintiff lost the use,
11 possession and enjoyment of her property.
12

13 **VIII. DEMAND**

14 WHEREFORE, Plaintiff demands judgment as follows:

15 8.1 Actual damages, including mental anguish and emotional distress;
16

17 8.2 Treble actual damages, pursuant to RCW 19.86, *et seq.*;

18 8.3 Statutory damages, pursuant to the FDCPA, 15 U.S.C.
19 § 1692k(a)(2)(A);
20

21 8.4 Costs and reasonable attorney's fees, pursuant to the FDCPA,
22 15 U.S.C. §1692k(a)(3) and RCW 19.86, *et seq.*;

23 8.5 Prejudgment interest;

24 8.6 Injunction prohibiting Defendants from:
25

8.6.1 Attempting to collect debts from persons known to be represented;

8.6.2 Falsely implying that debtors have a legal duty to agree to stipulated judgments;

8.6.3 Falsely representing that by agreeing to a stipulated judgment, collection activities will cease; and

8.7 For such other and further relief as may be just and proper.

DATED this 12th day of July, 2017.

Northwest Justice Project

Kirk D. Miller, P.S.

/s Scott M. Kinkley
Scott M. Kinkley, WSBA #42434
Attorney for Plaintiff

/s Kirk D. Miller
Kirk D. Miller, WSBA #40025
Attorney for Plaintiff